



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/156975

PRELIMINARY RECITALS

Pursuant to a petition filed April 15, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Ozaukee County Department of Social Services in regard to Medical Assistance, a hearing was held on June 12, 2014, at Port Washington, Wisconsin.

NOTE: The record was held open until June 19, 2014, to give the parties an opportunity to submit Power of Attorney (POA)/Authorized Representative Paper work and copies of the trust documents. Ms. Vang submitted the POA/Authorized Representative paperwork. It has been marked as Exhibit 3 and entered into the record. The Petitioner's son/POA submitted a 1999 amendment to the trust and the original trust documents. They have been marked as Exhibits 4 and 5, respectively and entered into the record.

The issue for determination is whether Ozaukee County Department of Social Services (the agency) correctly denied Petitioner's request to backdate her Institution Long Term Care Medicaid benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Pahoua Vang, Economic Support Specialist
Ozaukee County Department of Social Services
121 W. Main Street
PO Box 994
Port Washington, WI 53074-0994

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County.
2. On January 7, 2013, the agency sent Petitioner a notice that her application for Nursing Home Long Term Care Medicaid benefits was approved effective January 1, 2013. (Exhibit 2, pg. 8-14)
3. On October 14, 2013, the agency sent Petitioner a notice indicating that she needed to complete a renewal by November 30, 2013, in order to continue receiving Medicaid benefits. (Exhibit 2, pgs. 18-21)
4. On November 11, 2013, the agency processed the Petitioner's renewal and pended the application for verification. (Exhibit 2, pg. 2)
5. The agency did not timely receive the requested verification and Petitioner's case closed effective December 1, 2013. (Exhibit 2, pg. 2)
6. On February 17, 2014, the Petitioner completed a new application for Medicaid benefits and requested benefits to be backdated to November 2013. It is not clear why there was a request to back date benefits to November 2013, since Petitioner was still enrolled in the month of November 2013. (Exhibit 2, pgs. 26-36)
7. In the application, the Petitioner reported having an investment account valued at \$34,776.98 and a checking account valued at \$2,938.59 (Exhibit 2, pg. 28)
8. On April 3, 2014, the agency sent the Petitioner a notice indicating that as of February 1, 2014, she was eligible for Nursing Home Long Term Care Medicaid benefits. The notice further indicated that she was not eligible for January 2014, because she was over the asset limit. (Exhibit 2, pgs. 68-74)
9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 15, 2014. (Exhibit 1)
10. On April 29, 2014, the agency sent the Petitioner a notice indicating that she is not eligible for benefits for December 2013, because she was over the asset limit. (Exhibit 2, pgs. 92-94)
11. As of November 30, 2013, the value of the investment account was \$39,792.13. As of December 31, 2013, the value of the investment account was \$37,111.51 and as of February 1, 2014, it was \$34,776.98. During that time, the investments were part of a trust. (Exhibit 2, pg. 40)
12. The trust was a revocable trust. (Exhibits 4 and 5)
13. As of February 2014, Petitioner's name and the name of the trust were removed from the aforementioned investment account. (Exhibit 2, pg. 64)

DISCUSSION

"An institutionalized spouse must transfer assets to the community spouse by the next regularly scheduled review (12 months). If his/her assets are above \$2,000 on the date of the next scheduled review, s/he will remain ineligible until his/her assets no longer exceed the \$2000 Medicaid asset limit." Medicaid Eligibility Handbook (MEH) §18.4.6.2.2; *See also* Wis. Admin. Code 103.075(5)(d).

If the institutionalized spouse leaves the institution or becomes ineligible for Medicaid during the 12-month transfer period, but becomes eligible again, the time allowed to transfer assets does not start over again. MEH §18.4.6.1.1

According to Medicaid Eligibility Handbook (MEH) §18.4.6.2.2, “if the institutionalized spouse remains Medicaid eligible after the 12-month transfer period, but subsequently becomes ineligible and remains institutionalized, spousal impoverishment asset rules would not be applicable if s/he should reapply.”

“If the institutionalized person reapplies for Medicaid, his/her asset limit would be \$2000 and the spouse’s assets would not be counted...” *MEH §18.4.6.2.2*

In the case at hand, the 12-month transfer period ended November 30, 2013. The Petitioner has never left the institution. The Petitioner remained Medicaid eligible through November 30, 2013. Consequently, when the Petitioner reapplied for Medicaid benefits on February 17, 2014, her asset limit was \$2000 and her spouse’s assets should not have been counted.

As of February 28, 2014, the Petitioner no longer had an interest in the investment account. Her only asset was a joint checking account with a total balance of \$2,938.59.

When a Medicaid applicant shares a joint account with another person who is also an elderly, blind or disabled applicant/member, an equal share of the account is attributed to each account holder. *MEH §16.4.1.1* If the applicant shares a joint account with a person who is NOT an elderly, blind or disabled applicant/member, the entire amount of the account is attributed to the applicant. *MEH §16.4.1.2*

It appears that the agency considered the Petitioner’s spouse to be an elderly, blind or disabled applicant/member, because it counted only one half of the reported joint checking account as Petitioner’s asset. (See Exhibit 2, pg. 5; one half of \$2,938.59 is \$1469.30) Thus, the agency correctly determined that as of February 2014, Petitioner was eligible for Medicaid benefits.

However, the Petitioner’s POA requests that Petitioner’s benefits be backdated to December 1, 2013.

Benefits may be backdated to the first of the month, three months prior to the application month. *MEH §2.8.2* However, benefits may only be back dated for those months in which the applicant would have been eligible, had he applied in that month. *Id.*

In December 2013 and January 2014, the Petitioner still had a jointly held investment account with her husband that was part of revocable trust. The value of the investment account during the time in question was over \$30,000. Half of that account, or \$15,000+ would have been Petitioner’s countable asset, well over the \$2000 asset limit. As such, the agency correctly denied Petitioner’s request to back date her benefits.

Petitioner’s son/POA argued that because the funds were part of a trust, that it should not be counted as an asset. However, the trust was a revocable trust. Per *MEH §17.13.2*, revocable trusts are treated as follows:

1. The trust principal of a revocable trust is an available asset. “Trust principal” is the amount placed in trust by the grantor, plus any trust earnings paid into the trust and left to accumulate.
2. All payments from the trust to or for the benefit of the institutionalized person are counted as part of the institutionalized person’s income.
3. All payments from the trust that are not to or for the benefit of the institutionalized person are divestment.

Thus, the money in the investment account was a countable asset.

Petitioner’s son also indicated that consideration should be given to the fact that his mother never worked outside the home. First, whether his mother ever held a job that issued a pay check is irrelevant. Second,

it is sincerely hoped that Petitioner's son was not insinuating that his mother was not entitled to the money in the trust, simply because her job was to maintain the home and raise him/her children. If that is the argument, it is entirely without merit.

CONCLUSIONS OF LAW

The agency correctly denied Petitioner's request to back date her Nursing Home Long Term Care Medicaid benefits to December 1, 2013.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of June, 2014

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 25, 2014.

Ozaukee County Department of Social Services
Division of Health Care Access and Accountability